

AMENDED IN ASSEMBLY JUNE 18, 2015

AMENDED IN SENATE MAY 19, 2015

AMENDED IN SENATE APRIL 7, 2015

**SENATE BILL**

**No. 385**

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**Introduced by Senator Hueso**

(Principal coauthors: Assembly Members Alejo and Eduardo Garcia)

**(Coauthors: Senators Cannella and Stone)**

(Coauthors: Assembly Members Dodd and Mayes)

February 24, 2015

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An act to add and repeal Section 116431 of the Health and Safety Code, relating to drinking water, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

SB 385, as amended, Hueso. Primary drinking water standards: hexavalent chromium: compliance plan.

The California Safe Drinking Water Act provides for the operation of public water systems and imposes on the State Water Resources Control Board various duties and responsibilities for the regulation and control of drinking water in the State of California. The act requires the state board to adopt primary drinking water standards for contaminants in drinking water based upon specified criteria, and required a primary drinking water standard to be established for hexavalent chromium by January 1, 2004. Existing law authorizes the state board to grant a variance from primary drinking water standards to a public water system. Existing law makes certain violations of the act a crime.

This bill would authorize, until January 1, 2020, the state board, at the request of a public water system that prepares and submits a

compliance plan to the state board, to grant a period of time to achieve compliance with the primary drinking water standard for hexavalent chromium by approving the compliance plan, as prescribed. This bill would require a public water system to provide specified notice regarding the compliance plan to ~~its customers~~ *the persons served by the public water system* and the public water system to send written status reports to the state board. This bill would prohibit a public water system from being deemed in violation of the primary drinking water standard for hexavalent chromium while implementing an approved compliance plan or while state board action on its proposed and submitted compliance plan is pending.

The bill would authorize the state board to direct revisions to a compliance plan if the board makes certain determinations and would prohibit a public water system from being granted a period of time to achieve compliance under certain circumstances, including if the public water system does not submit a revised compliance plan or the revised compliance plan is disapproved. The bill would authorize the state board to implement, interpret, or make specific these provisions by means of criteria, published on its Internet Web site. To the extent that a public water system, when requesting approval of a compliance plan or submitting a report pursuant to these provisions, would make any false statement or representation, this bill would expand the scope of a crime and impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

This bill would declare that it is to take effect immediately as an urgency statute.

Vote:  $\frac{2}{3}$ . Appropriation: no. Fiscal committee: yes.

State-mandated local program: yes.

*The people of the State of California do enact as follows:*

- 1 SECTION 1. Section 116431 is added to the Health and Safety
- 2 Code, to read:
- 3 116431. (a) At the request of any public water system that
- 4 prepares and submits a compliance plan to the state board, the state
- 5 board may grant a period of time to achieve compliance with the

primary drinking water standard for hexavalent chromium by approving *the state board's written approval of the compliance plan.*

(b) (1) A compliance plan shall include all of the following:

(A) A compelling reason why it is not feasible for the system to presently comply with the primary drinking water standard for hexavalent chromium.

(B) A summary of the public water system's review of available funding sources, the best available technology or technologies for treatment, and other options to achieve and maintain compliance with the primary drinking water standard for hexavalent chromium by the earliest feasible date.

(C) A description of the actions the public water system is taking and will take by milestone dates to comply with the primary drinking water standard for hexavalent chromium by the earliest feasible date. The actions may include, but are not limited to, planning, designing, permitting, financing, constructing, testing, and activating treatment facilities or other capital improvements. The compliance plan shall include the public water system's best estimate of the funding required for compliance and the actions that the public water system will take to secure the funding. In no event shall the earliest feasible date extend beyond January 1, 2020.

(2) The state board may ~~approve~~ *do either of the following:*

(A) *Approve a compliance plan or provide plan.*

(B) *Provide written comments on the compliance plan to the public water system. The state board may approve a compliance plan if the public water system The comments may include requiring the public water system's compliance, prior to January 1, 2020, with the primary drinking water standard for hexavalent chromium if the earliest feasible date, based on review of the compliance plan and based on the public water system's specific circumstances identified in the plan, is prior to January 1, 2020. If the state board provides written comments, the public water system may submit a revised compliance plan that the state board may approve if the plan timely and adequately addresses any and all written comments provided by the state board.*

~~(3) The state board may, upon review of a compliance plan and based on the public water system's specific circumstances~~

1 identified in the plan, ~~require compliance with the primary drinking~~  
2 ~~water standard for hexavalent chromium before January 1, 2020.~~

3 (c) The public water system shall provide written notice  
4 regarding the compliance plan to ~~its customers~~ *the persons served*  
5 *by the public water system* at least two times per year. The written  
6 notice shall meet the translation requirements provided in  
7 subdivision (h) of Section 116450 and shall include notice of all  
8 of the following:

9 (1) That the public water system is implementing the compliance  
10 plan that has been approved by the state board and that  
11 demonstrates the public water system is taking the needed feasible  
12 actions to comply with the primary drinking water standard for  
13 hexavalent chromium. The notice shall summarize those actions  
14 in a form and manner determined by the state board. For notices  
15 after the initial notice, the public water system shall update  
16 information demonstrating progress implementing the compliance  
17 plan.

18 (2) That the ~~public water system's customers~~ *have persons*  
19 *served by the public water system have access to* alternative  
20 drinking water and that the public water system ~~may~~ *shall* provide  
21 information on that drinking water. The notice shall identify where  
22 ~~the customer can obtain that information.~~ *that information may be*  
23 *obtained.*

24 (3) Basic information describing hexavalent chromium,  
25 including the level found in drinking water provided by the public  
26 water system, the maximum contaminant level for hexavalent  
27 chromium, and the possible effects of hexavalent chromium on  
28 human health as specified in Appendix 64465-D of Section 64465  
29 of Title 22 of the California Code of Regulations.

30 (d) Following the state board's approval of the compliance plan,  
31 the public water system shall submit a written status report to the  
32 state board, at a frequency and by a deadline or deadlines set by  
33 the state board, for the state board's approval, that updates the  
34 status of actions specified in the state board-approved compliance  
35 plan and that specifies any changes to the compliance plan that  
36 are needed to achieve compliance with the primary drinking water  
37 standard for hexavalent chromium by the earliest feasible date.  
38 State board approval of a written status report that includes  
39 proposed changes to the compliance plan shall be deemed approval

1 of ~~those~~ *the proposed* changes to the compliance ~~plan~~. *plan and*  
2 *the resulting revised plan.*

3 (e) A public water system shall not be deemed in violation of  
4 the primary drinking water standard for hexavalent chromium  
5 while implementing an approved compliance plan. A public water  
6 system that has submitted a compliance plan for approval shall  
7 not be deemed in violation of the primary drinking water standard  
8 for hexavalent chromium while state board action on the proposed  
9 and submitted compliance plan is pending.

10 (f) (1) At any time, the state board may direct revisions to a  
11 compliance plan or disapprove a compliance plan if the state board  
12 determines that ~~the compliance plan is insufficient.~~ *actions and*  
13 *timelines addressed in the compliance plan are inadequate to*  
14 *achieve compliance by the earliest feasible date.* At any time, the  
15 state board may disapprove a written status report if the state board  
16 determines that the written status report fails to demonstrate that  
17 the public water system is complying with the approved compliance  
18 plan by the milestone dates. In these instances, the state board shall  
19 provide the public water system with written notice specifying the  
20 reason for the required revisions or disapproval and the deficiencies  
21 that shall be addressed in a resubmitted compliance plan or written  
22 status report.

23 (2) A previously approved compliance plan that the state board  
24 requires to be revised, or a written status report that is disapproved  
25 by the state board, may be revised and resubmitted by the public  
26 water system for state board approval within 60 days of receipt of  
27 the notice required by paragraph (1). During the 60 days, a public  
28 water system shall not be deemed in violation of the primary  
29 drinking water standard for hexavalent chromium. A public water  
30 system shall not be granted a period of time to achieve compliance  
31 with the primary drinking water standard for hexavalent chromium  
32 if the public water system fails to submit a revised compliance  
33 plan or revised written status report within 60 days of receiving  
34 the notice, or submits a revised compliance plan or revised written  
35 status report that is subsequently disapproved.

36 (3) A compliance plan approved by the state board pursuant to  
37 this section shall continue in effect until the earliest feasible  
38 compliance date, as specified by the compliance plan, or until the  
39 ~~state board determines that the compliance plan is no longer in~~

1 ~~effect pursuant to this subdivision.~~ *water system fails to retain*  
2 *state board approval of the compliance plan.*

3 (g) The state board may implement, interpret, or make specific  
4 the provisions of this section by means of criteria, published on  
5 its Internet Web site. This action by the state board shall not be  
6 subject to the rulemaking requirements of the Administrative  
7 Procedure Act (Chapter 3.5 (commencing with Section 11340) of  
8 Part 1 of Division 3 of Title 2 of the Government Code).

9 (h) This section does not affect the state's requirements for  
10 establishing drinking water standards for contaminants in drinking  
11 water. This section does not apply to any contaminants other than  
12 hexavalent chromium. This section is intended to address the  
13 specific circumstance ~~that~~ *that*, for some public water systems,  
14 compliance with the state's hexavalent chromium drinking water  
15 standard requires the design, financing, and construction of capital  
16 improvements. These major compliance actions necessitate a period  
17 of time for compliance.

18 (i) This section shall remain in effect only until January 1, 2020,  
19 and as of that date is repealed, unless a later enacted statute, that  
20 is enacted before January 1, 2020, deletes or extends that date.

21 SEC. 2. No reimbursement is required by this act pursuant to  
22 Section 6 of Article XIII B of the California Constitution because  
23 the only costs that may be incurred by a local agency or school  
24 district will be incurred because this act creates a new crime or  
25 infraction, eliminates a crime or infraction, or changes the penalty  
26 for a crime or infraction, within the meaning of Section 17556 of  
27 the Government Code, or changes the definition of a crime within  
28 the meaning of Section 6 of Article XIII B of the California  
29 Constitution.

30 SEC. 3. This act is an urgency statute necessary for the  
31 immediate preservation of the public peace, health, or safety within  
32 the meaning of Article IV of the Constitution and shall go into  
33 immediate effect. The facts constituting the necessity are:

34 The state's regulation setting the new maximum contaminant  
35 level for hexavalent chromium VI went into effect on July 1, 2014.  
36 The regulation required that the initial compliance monitoring  
37 under the regulation be performed by January 1, 2015. Some public  
38 water systems need to take major compliance actions, such as  
39 designing, financing, and constructing water treatment facilities,  
40 to comply with the new regulation. To avoid the systems being

- 1 deemed in violation of the regulation in 2015, and for a limited
- 2 time period thereafter, it is necessary for this act, which authorizes
- 3 a period of time to achieve compliance, to take effect immediately.

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